

Add Article 2.1 (commencing with Section 7070.1) to Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code to authorize the Board to develop and administer a sales and use tax amnesty program.

Source: Taxpayers' Bill of Rights Hearing

Under existing law, there is currently no amnesty program available to taxpayers who are not registered with the Board of Equalization (Board) and have sales and/or use tax liability owing the State of California. Nor is there a provision in the Revenue and Taxation Code to provide relief of penalties through an amnesty program.

However, in 1984, AB 3230 (Hannigan et al.), Chapter 1490, Statutes of 1984, imposed the state's only tax amnesty program. The amnesty program waived penalties and criminal sanctions for taxpayers who had not properly complied with reporting and payment requirements under the Sales and Use Tax Law and the Personal Income Tax Law but who came forward during the amnesty period to file proper returns and make proper payments (including accumulated interest). The 1984 tax amnesty program was enacted as a "one-time-only" program that was linked to law changes which strengthened both this Board's and the Franchise Tax Board's enforcement tools and penalties immediately after the amnesty program's expiration. Offering tax penalty amnesty immediately prior to strengthening enforcement tools and penalties was intended to convince evaders that the penalties for failure to comply would be much greater once the tax amnesty period passed and give taxpayers one last chance to voluntarily comply with tax laws before the stronger enforcement rules became effective. This 94-day amnesty program, which required a 2/3 vote of the Legislature, began December 10, 1984 and ended March 15, 1985.

A measure to reinstate another amnesty program (without the added enforcement tools) was also introduced in the 1997-98 Legislative Session. That measure, AB 2635 (Martinez), which required only a majority vote in the Legislature, failed in the Assembly Revenue and Taxation Committee.

An amnesty program is separate and distinct from the Board's ongoing voluntary disclosure program. Under the voluntary disclosure program, as authorized under Revenue and Taxation Code Section 6487.05, unregistered out-of-state retailers may voluntarily register with the Board and may be able to limit their liability for tax, penalties and interest due. Ordinarily, if the Board finds that an out-of-state retailer is liable for tax on its sales to California consumers, and that out-of-state retailer failed to file sales and use tax returns and report that tax, the law allows the Board to issue a deficiency determination for tax, interest, and penalties owed as long back as 8 years. Under the voluntary disclosure program, if an out-of-state retailer qualifies, the billing period is limited to 3 years.

The amnesty program, on the other hand, does not authorize forgiveness of any unpaid tax or interest. Instead, it only authorizes forgiveness of penalties.

Under the 1984 amnesty program, the Board of Equalization reported that total sales and use tax and interest revenues brought in as a result of that program amounted to a total of \$43.8 million. However, \$28.5 million of this revenue was actually audit-related and had already been identified by the Board's staff, but had not yet been billed. And, with respect to the remaining \$15.3 million collected through the amnesty program, staff believed that a significant portion of that amount probably would have been identified by Board staff eventually, either through future audits or other enforcement mechanisms outside the amnesty program.

The Franchise Tax Board reported that the total personal income tax and interest revenue brought in under its 1984 amnesty program amounted to \$154 million. However, that department estimates that it could have collected \$119.5 million from those individuals through its ongoing enforcement programs had amnesty not been adopted.

For purposes of consistency, the revenues associated with this proposal have been identified using the same rationale as used under the 1984 evaluation of the amnesty program – combining both audit-related and non-audit related revenues. Using the growth in taxable sales since 1984, staff has estimated the audit-related revenues for 2001-02 would amount to \$79.4 million, and non-audit revenues of \$42.8 million, for a total anticipated revenues of \$122.2 million.

One of the criticisms of the 1984 amnesty program was that the exact amount of revenues actually collected as a direct result of the program was substantially less than the amounts publicized. In a *Sacramento Bee* article published March 19, 1985, it was alleged that the public was being misled and that there is “all this hype that they have uncovered this vast amount of revenues from people who weren't going to get caught and who voluntarily came forward (to pay back taxes). Well, 80 percent of those were people who were going to be coming in anyway.”

This proposal is similar to the 1984 amnesty program, except it does not contain any additional enforcement tools, nor does it apply to personal income taxes. It was brought to the attention of the Board at a Taxpayers' Bill of Rights hearing by Mr. Joe Micallef of the Associated Sales Tax Consultants. Mr. Micallef contends that sales and use tax taxpayers will not come forward and inform the Board of their existing tax liability because they are aware they would be subject to significant penalties. Therefore, these taxpayers continue to remain hidden from the Board and the State of California is not receiving the tax for which these taxpayers are liable. In addition, the State is not receiving future tax payments

from these taxpayers. The Board may discover a few of these taxpayers, but the vast majority will continue to remain hidden from the Board.

Mr. Micallef also points out that the amnesty program would benefit taxpayers and the State by bringing out of hiding taxpayers who have existing tax liabilities which would be paid. Further, these taxpayers will become part of the system and will start remitting tax on a continuing basis into the future. The State will receive tax monies that it would not otherwise receive, and at a minimal cost.

Article 2.1 (commencing with Section 7070.1) is added to Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code to read:

Article 2.1. Tax Penalty Amnesty

7070.1. The board shall develop and administer a tax penalty amnesty program for the sales and use tax program administered by the board.

7071.1. The tax penalty amnesty program shall be conducted during the period of October 1, 2001 through March 31, 2002. The program shall apply to tax liabilities due and payable for tax reporting periods beginning on October 1, 1996 and ending on or before September 30, 2001. A statute of limitations shall bar collection of taxes, interest and penalties for periods prior to October 1, 1996 for all persons filing taxes under the Tax Amnesty Program.

7072.1. (a) For any taxpayer who meet the requirements of Section 7073.1:

(1) The board shall waive all penalties imposed by this part, for the tax reporting periods for which tax penalty amnesty is requested, which are owed as a result of the nonreporting or underreporting of tax liabilities.

(2) No criminal action shall be brought against the taxpayer, for the tax reporting periods for which tax amnesty is requested, for the nonreporting or underreporting of tax liabilities.

(3) Paragraphs (1) and (2) shall not apply to the nonpayment of any taxes previously assessed.

(b) This section shall not apply to violations of this part for which, as of October 1, 2001, (1) the taxpayer is on notice of a criminal investigation by a complaint having been filed against him or her or by written notice having been mailed to him or her that he or she is under criminal investigation, or (2) a court proceeding has already been initiated.

(c) No refund or credit shall be granted of any penalty paid prior to the time the taxpayer makes a request for tax penalty amnesty pursuant to Section 7073.1.

7073.1 (a) The provisions of this article shall apply to any taxpayer who, on or after October 1, 2001 and before March 31, 2002, files an application for tax penalty amnesty and does both of the following:

(1) Files completed tax returns for all tax reporting periods for which he or she has not previously filed a tax return and files completed amended returns for all tax reporting periods for which he or she underreported his or her tax liability.

(2) Pays in full the taxes and interest due.

(b) The board may enter into an installment payment agreement in lieu of the complete payment required under paragraph (2) of subdivision (a). Any such agreement shall include interest on the outstanding amount due at the rate prescribed by law. Failure by the taxpayer to fully comply with the terms of the installment payment agreement shall render the waiver of penalties null and void, unless the board determines that the failure was due to reasonable causes, and the total amount of tax, interest, and all penalties shall be immediately due and payable.

(c) If, subsequent to March 31, 2002, the board issues a deficiency assessment upon a return filed pursuant to subdivision (a), the board shall have the authority to impose penalties and criminal action may be brought under this part only with respect to the difference between the amount shown on that return and the correct amount of tax. This action shall not invalidate any waivers granted under Section 7072.1.

7074.1 The board shall issue forms and instructions and take other actions needed to implement this article.

7075.1 The board shall adequately publicize the tax penalty amnesty program so as to maximize public awareness of the participation in the program. The board shall coordinate to the highest degree possible its publicity efforts and other actions taken in implementing this article with similar programs administered by the Franchise Tax Board